IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (l) NO. 410 OF 2006

IN

COMPANY APPEAL (L) NO. 2 of 2006

IN

COMPANY PETITION NO. 106 OF 2005

Mr. Shobhit Rajan & Ors. .... Petitioner

versus

Akkadian Housing and Infra-
structure Pvt. Limited & ors. ... Respondents.

Shri D.J.Khambata with M.S.Doctor i/b. M/s. Bachubhai Monim & Co. for appellants.

Shri I.M.Chagla Sr. counsel with Ms. A Dutt, Ms. F.Sethna and Ms. D.Das i/b Dunmorr Sett for Respondents 1 and 2.

Shri J.P.Sen i/b.M/s. Federal & Rashmikant for Respondent 5,8 to 10.

CORAM; V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 04TH MAY, 2006.

P.C:

1. By this application the applicant seeks modification/clarification of the order passed by us in Company Appeal (Lodging) No.2 of 2006 on 24-1-2006. By that order the proceedings in Company Petition No.106/05 pending before the Company Law Board were ordered not to continue till the arbitration appplication is decided.

2. Company Petition No.106 of 2005 is filed by Akkadian Housing and Infrastructure Pvt. Limited and others under sections 397 and 398 of the Companies Act complaining that the affairs of the company are being conducted in a manner prejudicial to the interest of the company and also the original petitioner, a member of the company, is being neglected in the matter of conduct of the company. During the pendency of this application, present appellant raised a contention that in view of the provisions of 8 of the Arbitration Act 1996 the Company Law Board cannot proceed with the petition under sections 397 and 398 of the Act till the question of arbitration is decided on an application under section 8 thereof. Application was also filed seeking injunction against the respondents therein from preventing the ptitioners from attending the meetings of the Board of Directors and dealing with the properties of the company. This was decided by order passed by the Company Law Board on 20-12-2005. This order is challenged in the present appeal on the ground mentioned therein. It was when the appeal came up for admission that the order of which clarification is sought was passed.

3. The contentions of the present applicant is that what was stayed by this court by the said order was proceeding with the Company Petition No. 106 of 2005

on merit thereof and the applicant would have remedy to seek interim reliefs from the Company Law Board. However, that was not allowed. Hence this application for clarification or modification of the order dated 24-1-2006. The contentions raised on behalf of the applicant is that if the stay granted by the said order is construed to mean a blanket stay of every proceedings even for interim relief by the Company Law Board, the present applicant would be rendered remedyless to complain of any injury caused to the property of the company pending adjudication of the company petition.

4. The main contention of the appellants herein is that till application under section 8 of the Arbitration act is decided, no further proceedings can take place in relation to the company petition under sections 397 amd 398 of the Act and therefore the Board fell in error in passing the impugned order. The submission before us on behalf of the applicants is that if the stay is construed to be a blanket stay, there would be no remedy which submission was sought to be countered by present non-applicant saying that the remedy is, applying to this court. If the submission of the appellant that till section 8 application is decided no proceedings can take place in the company petition. Then this court also may not have jurisdiction to deal with anything like the present

application for prayers (b) to (d) and that would necessarily entail rendering the applicant remedyless.

5. The prayers (b) to (d) of the company application seeks injunction against the present appellants. We need not go into the question as to whether the respondent in an appeal can claim interim relief against the appellant itself. Apart from that as directed by us earlier, the hearing under section 8 of the act is complete and parties are awaiting orders. The apprehension expressed by this application is that further deterioration or waste of the property of the company is possible and therefore the application for injunction should either be allowed to be made to the company law board or be heard in this court.

6. In our opinion, it is not necessary to hear and decide the question as to whether injunction should be granted or should not be granted at this juncture because the matter is likely to be decided by the Company Law Board, the hearing of which is completed. In our opinion, interest of justice would be met if the Company Law Board is requested to decide the application under section 8 of the Arbitration Act by passing an appropriate order as expeditiously as possible preferably within 15 days from the date of receipt of this order.

7. It is pertinent to note that the appellant very strongly contended before us that dealing in real estate property itself is their business and any order and injunction restraining them from doing so would gravely affect the company and its business would come to a stand still and will further deteriorate the company's interest which is not beneficial both to the appellants and the respondents. It is obvious from this submission that the business of the company itself is dealing in real estate, purchase and selling of plot of land or construction thereof. In such a situation even if no business transaction whatsoever is acquired by the company, which would naturally affect the business, if the acquisition of the properties is not being injuncted. Therefore no substantial injury of any nature would be caused to the parties, if all the parties to the original application are directed to maintain status-quo as of today in relation to transferring the properties of the company in any manner whatsoever permanently or temporarily by any means of modes till the decision of the Company Law Board on the application under section 8 of the Arbitration Act. It is obvious that the observations made by us hereinbefore pertaining to the facts of the case are absolutely tentative in nature and are made only for the purposes of deciding this application and making this order only. It is equally obvious that none of the authorities either the Company Law Board or

thereafter any other Court can be influenced by any primafacie observations. Application accordingly disposed of.

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